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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,450	06/24/2003	Ernest B. Pryor JR.	10499-649US (795210104-03)	4405
570	7590	02/23/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,450

Applicant(s)

PRYOR, ERNEST B.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 6-24-03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6-24-03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims 4 and 12. Therefore, the handle having an opening in fluid communication of the cavity, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 4 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. One can not tell the best mode in the positioning and connection of the opening of the handle to the cavity.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language

5. Claims 1, 5, 9, 13 are rejected under 35 U.S.C. 102(e), or alternately 102(a) as being anticipated by Daniels Jr. US 2002/0080678.

The Daniels reference teaches a spherical handle 70, a elongate plunger 62, a trough cavity 120 extending from the 1<sup>st</sup> end to the 2<sup>nd</sup> end.

With regards to the phrase "cavity being open at least at the second end", the phrase is broad in scope in the direction of the opening. It is noted that the trough 120 is open radially along the entire length of the trough 120 from the 1<sup>st</sup> end to the 2<sup>nd</sup> end.

6. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Strech 5636390.

With regards to the use of manipulating food stuff in a blender, such language has been considered and deemed as directed to the intended use of the structure and provides little patentable distinction to the structure scope of the recited elements of the claim.

The Strech reference discloses an elongate plunger 10, for stuffing material having a 1<sup>st</sup> end (top of drawing) and 2<sup>nd</sup> end (bottom of drawings), a cavity between 22B 17, 22, and a handle 30A, 20, 22B, and including a scoop end at 22, 22A, and an edge at 22a, 22 which is structurally capable of scraping if so desired in use. The handle 10, 30 includes a disc collar such as 15B (figs 2, 4) or a generally frustoconical collar as seen in 15C (figs 1, 3) and an opening in the handle as defined by the upper peripherally confined portions above 22b and the collar 15 above the scoop portion 22 with is connected to the cavity in which food may move from the scoop end of the cavity into the opening of the handle at the 1<sup>st</sup> end.

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7. Claims 1-3, 9-11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Berler 4250771.

The Berler reference as seen in figures 1-6 discloses an elongate plunger 18, for stuffing material having a 1<sup>st</sup> end 22 and 2<sup>nd</sup> end near 22, a cavity trough formed between the sides 32, 34 to form a scoop, and a handle 26, and including a scoop end at the end of 20, 22, and an edge scraper at the edges of 22 if so desired in use. The handle 26 includes a plate collar 24. The Berler reference also shows a blender base with a blender processor jar of the type having a blade from the bottom of the jar, and a lid.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771.

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the collar being a disc in the embodiment of figures 1-6. However the Berler reference discloses in figure 8 a collar shaped in a cylindrical shape 56. In view of the teaching of Berler that the collar may be of differing shapes, it is deemed that it would have been obvious to one of ordinary skill in the art to

made the collar into a disc shape or any other shape which would provide a collar base such as a frustoconical shape since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

10. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771 in view of Daniels, Jr., US 2002/0080678 ('678).

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the handle being generally semi-spherical in shape, The reference to Daniels, Jr. ('678) discloses that a beverage plunger stick 62 may have a spherical like end 70.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle shape of a spherical like end or any other shape so that the handle maybe gripped in a more ergonomically manner since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

11. Claim 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771 in view of Strech 5636390.

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the handle having an opening in fluid communication with the cavity, and having a plunger collar which is frusto-conical in

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shape, The reference to Strech discloses that a plunger may have a collar which is frustoconical like and having a handle with has a cavity connected to the trough, as disused above to the Strech refrence as see in figures 1 and 3..

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle and collar shape to a frustoconical shape including a handle opening connected to the trough cavity so that the handle maybe gripped in a more ergonomically manner since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

### ***Conclusion***

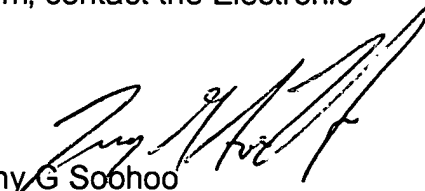
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Daniels, Jr. 6527433, Lindley 4268080, Bundy Des 732650, Nikkah D495926, Lawson Des77900, Nikkah US2005/00118532, Powers Des376515, Haldopoulos et al 3609776, Bowman 1211062, Averill 339514.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Sobhoo  
Primary Examiner  
Art Unit 1723

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